



New York State
Division of Housing and Community Renewal
Office of Rent Administration

*State and City Rent and Eviction Regulations
Emergency Tenant Protection Regulations
New York City Rent Stabilization Code*

Advisory Opinion 92-1 (May 20, 1992)

***Amendments, Supplements, Extensions
and Refiling of PAR's***¹

This Advisory Opinion is issued pursuant to section 2109.8 of the State Rent and Eviction Regulations (State Rent Regs); section 2209.8 of the City Rent and Eviction Regulations (City Rent Regs); the Emergency Tenant Protection Regulations (TPR) adopted under the Emergency Tenant Protection Act (ETPA), section 10; and section 2527.11 of the Rent Stabilization Code (RSC).

Although this Advisory Opinion specifically refers to applicable sections of the RSC, it shall be equally applicable to stabilized units in the ETPA counties of Nassau, Westchester and Rockland, as well as to all rent controlled units statewide. Where a provision of the Regulations governing these jurisdictions is inconsistent with the RSC with respect to the application of the Advisory Opinion, such inconsistency will be noted.

Section 2529.1(a) of the RSC provides that a party may file a Petition for Administrative Review ("PAR") of an order issued by a Rent Administrator, where it is alleged that such order is erroneous. The RSC provides that the adverse party will be served by DHCR with a copy of the PAR, and pursuant to Section 2529.5 of the RSC, may file a verified or affirmed answer to the PAR within 20 days from the date of mailing of a copy of the PAR by DHCR.

Section 2527.10 of the RSC sets forth the rules concerning amendments to complaints or applications, which are applicable to the amendment and/or supplementation of PARs.

Section 2527.10(a) provides that DHCR may authorize an amendment *at any time* for "good cause shown." An amendment "as of right", however, must be effectuated *prior to the time within which an answer may be filed*.

¹ The State Rent Control Regulations use the term "Protest."

*This document is being reissued for informational purposes only.
The original document which contains signatures of authorization is
on file at DHCR's Office of Rent Administration.*



1) Amendments As of Right²

A party may only amend as of right "prior to the time within which an answer may be filed." Thus, the party filing a PAR may amend it or file supplementary material, as of right, within 20 days from the date of mailing of a copy of the PAR to the adverse party. However, because Section 2529.4 of the RSC requires that such mailing be performed by DHCR and because the petitioner has no knowledge of the date on which the mailing occurs, the party filing the PAR may amend it or file supplementary material, as of right, within 20 days from the date DHCR has mailed an acknowledgment to the PAR-filing (form RAR-9) to the petitioner. Where the respondent requests an extension of time within which to file an answer an automatic extension of the time to amend will also be granted.

An exception to the rule than an amendment/supplementation of a PAR, as a matter of right, must occur within 20 days from the date DHCR mails form RAR-9 to the petitioner is the situation where the petitioner's time to file a PAR is running but preparation of the PAR cannot be completed because the petitioner is waiting for the Agency to make available the Rent Administrator's case file for petitioner's inspection. In such instance, the procedure which must be followed by the petitioner is as follows: The PAR is to be filed within 35 days of the issuance of the Rent Administrator's order. The party filing the PAR should note that it is awaiting an opportunity to review the Rent Administrator's file and will be submitting supplemental matters to the initial PAR. Amendments and supplements to the PAR will be accepted as of right if made within 35 days of the time access to the file is provided, and if contemporaneous with the filing of the PAR.

2) Amendments For Good Cause Shown

DHCR, for good cause shown, may permit the amendment/supplementation of a PAR at any time before the PAR opinion is issued.

"Good Cause" includes such circumstances as newly discovered evidence which could not reasonably have been offered or included at an earlier time, changes in the applicable law or regulations, retention of counsel subsequent to the initial filing of the PAR and correction of mistakes. It does not include the situation where the petitioner is awaiting access to review the Rent Administrator's file (supra) as the petitioner must follow the procedure set forth earlier in this Advisory Opinion.

An application for permission to file amendments/supplements to PARs for good cause shown must be made in writing to the Chief of the Bureau which will be processing the PAR, stating the reason for the filing of the amendment and annexing a copy of the amendment/supplementation.

In this regard it should be noted that because the time within which to file the PAR is limited to 35 days after the date the Rent Administrator's order is issued, with no extension of such period being permitted, caution must be exercised to assure that the intended amendment or supplementation, whether by right or at the discretion of DHCR, does not result in the filing of the PAR after the 35 day filing period.

Authorized PAR amendments or supplements will be served upon the respondents by DHCR.

When a PAR has been amended or supplemented after an answer has been filed, the respondents may file an amended answer within 20 days from the date of mailing of a copy of the amended/supplemented PAR by DHCR.

² Except under N.Y.C. rent stabilization, parties are responsible for service of pleadings on all adverse parties, waiving the service requirements.

3) Granting Extensions

Section 2529.5 of the RSC provides that a person served with a PAR may file an answer within 20 days³ from the date of mailing of the copy of the PAR by the DHCR and that the Commissioner may in his discretion, and for good cause shown, extend the time within which to answer.

All requests, made by an owner, tenant or representative of either party for an extension must be submitted in writing. Any request made by telephone must be followed by a written request within five days. The written request should specify why the extension is being requested. If granted, the extension will be limited to 20 days.

If a party requires a subsequent extension, he/she must provide evidence to justify the request. A subsequent extension may be granted, upon good cause shown for such time as is warranted by circumstances.

Where the agency has been directed, pursuant to a court order, to process a case by a date certain, no extension will be granted to the party who obtained the court order unless their legal representative stipulates to extend the deadline ordered by the court.

Section 2529.11 of the RSC provides that a PAR which is not finally determined by the Commissioner within 90 days may be "deemed denied" by the petitioner for the purpose of commencing a judicial proceeding pursuant to Article 78 of the Civil Practice Law and Rules, unless the petitioner has agreed to extensions. Therefore, the granting of an extension by the Commissioner which does not have the consent of the petitioner would not preclude the petitioner from commencing an Article 78 proceeding if the PAR is not finally determined in 90 days. Unless a "deemed denial" Article 78 proceeding is pending, the DHCR shall determine a PAR notwithstanding that such 90 day or extended period has elapsed.

4. PAR Rejection Orders and Refiled PARs

Section 2529.4 of the RSC established the requirements for service and filing of PARs and specifies that a PAR will not be accepted for filing unless it is completed in the manner consistent with prescribed form which requires, for example, that it be accompanied by a complete copy of the order to be reviewed. It has been DHCR's policy to require that PARs which are refiled because the original PAR was rejected also be completed fully and correctly with a complete copy of the order to be reviewed attached. DHCR has modified its policy to preclude automatic dismissal of a refiled PAR for failure to meet all of the procedural requirements if a review of both the initial and refiled PARs indicated full compliance.

Furthermore, the 15 day limitation within which to refile a PAR has been extended to 35 days. A petitioner in a timely refiled petition may seek additional time to comply with all procedural requirements by setting forth in the refiled petition reasons why the 35 day time period is insufficient to provide all required information.

Use of the procedures established by this Advisory Opinion will both assure that the integrity of the PAR filing period is strictly maintained, and that petitioners are afforded a reasonable opportunity to complete the preparation of their PARs and all parties to the PAR have a reasonable opportunity to respond.

Joseph A. D'Agosta
Acting Deputy Commissioner
for Rent Administration

³Under the State and City Rent Control Regs and the TPR, the answer must be filed within 15 days.